Supreme Court, U.S.
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No. 07-

IN THE

Supreme Court of the United States

SAIFULLAH PARACHA, PETITIONER

v.

GEORGE W. BUSH, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the regime established by Congress in the Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 (2006), as applied to a lawful permanent resident detained in Guantánamo as an enemy combatant, violates the Suspension Clause and the Due Process Clause.

PARTIES TO THE PROCEEDING

Petitioners are Saifullah Paracha and his next friend, Farhat Paracha. Respondents are President George W. Bush; Robert M. Gates, Secretary of Defense; and Jay Hood, Commander, Joint Task Force-GTMO, U.S. Naval Station Guantánamo Bay.

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OPINIONS AND ORDERS BELOW

The order of the U.S. Court of Appeals for the District of Columbia Circuit directing the district court to dismiss Petitioners' habeas action is unreported. Pet. App. A.

JURISDICTION

The judgment of the Court of Appeals was entered on April 9, 2007. Pet. App. A. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND TREATY PROVISIONS INVOLVED

The Constitutional, statutory, and international law provisions involved, which are set forth verbatim in the appendix, are U.S. Const., art. 1, § 9, cl. 2 and amend. V; 28 U.S.C. § 2241; Military Commissions Act of 2006, §§ 5(a), § 7(a), Pub. L. No. 109-366, 120 Stat. 2741-44 (2006); Detainee Treatment Act of 2005, §§ 1005(e)(1), (2), Pub. L. No. 109-148, 119 Stat. 2631, 2635 (2005) (10 U.S.C. § 801 note); Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001); Geneva Convention Relative to the Treatment of Prisoners of War, art. 3 (Common Article 3), 6 U.S.T. 3316 (1949).

STATEMENT

1. In the wake of the September 11, 2001 attacks, the United States took into custody thousands of foreign nationals all over the world. Beginning in January 2002, the U.S. transported more than 800 of these foreign nationals to prison facilities at Guantá-

namo. About 360 remain, and petitioner, Saifullah Paracha, is one of them.

Paracha, 60, is a citizen of Pakistan.[1] In 1971, he came to the U.S., where he lived in Queens and attended the New York Institute of Technology. In 1980, he was granted a permanent resident visa. (Pet. App. E.) While in the U.S., Paracha established a broadcasting company that broadcast programs for the local Pakistani community. He also bought two travel agencies that facilitated travel between the U.S. and Pakistan.

In 1977, Paracha's wife, Farhat, who also is a citizen of Pakistan, came to the U.S., where she earned a master's degree at NYU and met Paracha. The couple married in 1979 and have four children. Paracha's wife also holds a green card (Pet. App. F), as do their four children. Four of Paracha's siblings live in the United States. Two hold green cards, and two are naturalized citizens. Another with a green card died recently. Paracha also has many nieces and nephews living in the U.S. who are Americans by birth or naturalization. According to a nephew's affidavit, "in terms of family connections, Saifullah Paracha is as much or more American than Pakistani."

In 1986, Paracha returned to Pakistan with his family to oversee the Pakistani operations of his U.S. travel agencies. Thereafter, Paracha and an

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[1] All statements of fact are in the record of this case with the exception of an affidavit that Paracha provided to counsel at Guantánamo on July 3, 2007. That affidavit is attached as Pet. App. D.

American partner established an export-import business. The business acted as a buying agent in Pakistan for such American retailers as Wal-Mart and K-Mart, placing orders for garments and other merchandise made in Pakistan. Paracha oversaw factory operations in Pakistan; his American partner lined up buyers in the U.S. In Pakistan, Paracha also set up a television production company that produced plays and programs designed to minimize religious antagonism.

From 1986 until 1999, Paracha visited the U.S. about once a year with his wife to tend to his business interests and visit his brothers and sisters, their children, and other relatives. In 1995 and 1996, Paracha and his wife lived with relatives here while Paracha's wife underwent medical treatment. On each of their visits to the U.S., the Parachas entered on their permanent resident visas. The couple intend to spend their retirement in the U.S., close to their large extended family.

2. In July 2003, Paracha traveled to Bangkok to meet individuals he had been led to believe were buyers from K-Mart. On his arrival, U.S. agents seized him, blindfolded him, hand-cuffed him, leg-cuffed him, and threw him into a waiting car. He was then taken to the U.S. military base at Bagram, Afghanistan. There, he endured solitary confinement for fifteen months, as he later said, "under extremely . . . bad conditions." In September 2004, Paracha was brought to Guantánamo, where he has been held ever since.

On November 26, 2004, a Combatant Status Review Tribunal ("CSRT") was convened to determine whether Paracha was an "enemy

combatant." The Department of Defense defines an "enemy combatant" as "an individual who was part of or supporting Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners." The CSRT rules deny a detainee the assistance of counsel. Instead a detainee is provided with a Personal Representative ("PR"). The PR is not an advocate for the detainee, and the detainee's communications with the PR were not confidential. Paracha's PR met with him once, six days before his December 8, 2004 CSRT hearing, to explain the CSRT process and read him the government's allegations.

Most of the government's allegations were general or vague.[2] Moreover, the evidence on which the

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[2] The government based its claim that Paracha was properly designated as an "enemy combatant" on twelve allegations:

3.a. The Detainee supported the Taliban and al Qaida against the United States and its coalition partners.

3.a-1. The Detainee was involved in an al Qaida plan to smuggle explosives into the United States.

3.a-2. The Detainee "held for safekeeping" large amounts of al Qaida money given to him by known al Qaida operatives.

3.a-3. The Detainee, at the request of an al Qaida operative, researched offshore companies for investment possibilities.

3.a-4. The Detainee associated with known high-level al Qaida operatives.

3.a-5. The Detainee recommended to an al Qaida operative that nuclear weapons should be used against U.S. troops and suggested where these weapons might be obtained.

3.a-6. The Detainee assisted al Qaida in locating houses for al Qaida members and their families.

(...continued)

government relied to support its allegations was classified. Finally, the CSRTs were appointed by the military and were subject to command influence and reversal by superiors.[3] Paracha therefore had no meaningful opportunity to contest the factual basis for his detention before a neutral decisionmaker. To most of the allegations, he could offer only conclusory denials. The CSRT denied Paracha's requests to present evidence of his innocence, deeming the evidence irrelevant.[4] The CSRT did allow into evidence

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3.a-7. The Detainee offered to al Qaida his media facilities for Urdu translation of extremist materials, including statements from Usama Bin Laden.

3.a-8. Al Qaida invested money in a company owned by the Detainee.

3.a-9. The Detainee had a discussion with a high level al Qaida facilitator about getting chemicals and explosives into a coalition partner's national boundaries.

3.a-10. The Detainee met with Usama Bin Laden in 1999 and 2000, two times.

3.a-11. The Detainee met with two high level al Qaida officials and knew they were "wanted men."

[3] *See, e.g.*, Decl. of Stephen Abraham, Lt. Col., U.S. Army Reserve, appended to Pet'rs' Reply to Opp'n to Pet. for Rehearing, *Al Odah v. United States*, No. 06-1196; *Upholding the Principles of Habeas Corpus for Detainees, 2007: Hearing before the House Armed Services Comm.*, 110th Cong., 1st Sess. (2007) (statement and testimony of Lt. Col. Abraham).

[4] At his meeting with the PR, Paracha requested that letters he had written to U.S. officials before his capture be provided to the CSRT. Paracha believed these letters showed he did not sympathize with terrorists. One was a letter to President Bush and other government officials, written before the September 11, 2001 attacks, proposing means of avoiding such attacks. The other was a letter to the U.S. Ambassador to Pakistan expressing Paracha's willingness to address issues relating to terrorism-related criminal charges against his son. The CSRT,

(...continued)

affidavits attesting to Paracha's character and disputing that Paracha could have supported terrorists. At the conclusion of the hearing, the CSRT determined, purportedly "by a preponderance of the evidence," that Paracha was "affiliated with al Qaida" and therefore was properly detained as an enemy combatant. On December 21, 2004, the Director, CSRTs, concurred in the CSRT's decision.

3. On November 17, 2004, Paracha filed a habeas petition in the U.S. District Court for the District of Columbia. Citing his status as a lawful permanent resident, the petition alleged that Paracha's detention violated his rights under, *inter alia*, the Due Process Clause. Respondents moved to dismiss the petition, arguing that Paracha had no Due Process or other rights because he was a mere alien and not a lawful permanent resident status; respondents claimed that Paracha had abandoned that status when he moved back to Pakistan in 1986. Respondents also argued that even if Paracha retained his lawful permanent resident status, his CSRT proceeding gave him all the process he was due. Finally, respondents moved to stay Paracha's case pending the D.C. Circuit's resolution of *Boumediene v. Bush* and *Al Odah v. United States*.

On March 23, 2005, the district court granted respondents' motion to stay Paracha's habeas petition pending the D.C. Circuit's decision in *Boumediene*. Paracha appealed the district court's

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deeming these letters irrelevant, did not seek to obtain them, even though an FBI agent at Guantánamo evidently had a copy of Paracha's letter to President Bush.

stay order, arguing, among other things, that, because he is a lawful permanent resident, he stood on a different footing than the *Boumediene* petitioners. Paracha also appealed an order of the district court denying his motion for release from solitary confinement.

On December 30, 2005, the President signed into law the Detainee Treatment Act of 2005 ("DTA"), Pub. L. No. 109-148, 119 Stat. 2631 (2005) (10 U.S.C. § 801 note), providing for review in the D.C. Circuit of final CSRT decisions. On January 24, 2006, Paracha filed a DTA action, D.C. Cir. No. 06-1038. That action was scheduled to be briefed and argued this summer, but Paracha has moved to vacate the briefing schedule in light of the D.C. Circuit's decision in *Bismullah v. Gates*, --- F.3d ----, 2007 WL 2067938 (D.C. Cir. Jul. 20, 2007), which clarified the scope of the record on which the court is to review final DTA decisions.

On October 17, 2006, the President signed into law the Military Commissions Act of 2006 ("MCA"), Pub. L. No. 109-366, 120 Stat. 2600 (2006). The MCA purported to strip federal courts of jurisdiction over habeas actions brought by foreign nationals detained at Guantánamo and to limit the judicial remedies of such detainees to DTA actions. On February 20, 2007, the Court of Appeals issued its decision in *Boumediene v. Bush*, 476 F.3d 981 (D.C. Cir. 2007). The court held that the MCA had stripped it of jurisdiction to consider the petitioners' claims, and that the petitioners lacked standing to challenge the jurisdiction strip as a violation of the Suspension Clause because, as aliens held outside sovereign U.S. territory, the petitioners have no constitutional

rights. On April 9, 2007, the Court of Appeals summarily vacated Paracha's appeals for lack of jurisdiction based on *Boumediene* without addressing the distinct issues presented by his status as a lawful permanent resident, and ordered the district court to dismiss Paracha's habeas action. (Pet. App. A.) On June 27, 2007, the Court of Appeals denied Paracha's motion to stay the mandate. On June 29, 2007, this Court granted review in *Boumediene*.

REASONS FOR GRANTING THE WRIT

This case presents the question whether the regime established by Congress in the Military Commissions Act of 2006, as applied to a lawful permanent resident detained as an enemy combatant in Guantánamo, violates the Suspension Clause and the Due Process Clause. A lawful permanent resident enjoys the same constitutional rights as a citizen. As applied to a citizen detained as an enemy combatant in Guantánamo, the MCA would violate the Suspension Clause by eliminating the writ of habeas corpus without providing an adequate substitute, and would violate the Due Process Clause by denying the citizen the assistance of counsel and a meaningful opportunity to contest the factual basis for his detention before a neutral decisionmaker. The fact that the detainee is a lawful permanent resident should lead to no different conclusion.

Aliens who are lawful permanent residents of the United States enjoy the same constitutional rights as do citizens, including the right to due process. *See Zadvydas* v. *Davis*, 533 U.S. 678, 690 (2001); *see also United States* v. *Verdugo-Urquidez*, 494 U.S. 259, 265 (1990); *Plyler* v. *Doe*, 457 U.S. 202, 210 (1982);

Yick Wo v. *Hopkins*, 118 U.S. 356, 369 (1886). Applying that principle, lower courts have held that lawful permanent residents enjoy the same protections against unlawful detention guaranteed by the Great Writ as do citizens. *See Campos* v. *INS*, 961 F.2d 309, 316 (1st Cir. 1992) ("lawful permanent resident aliens . . . enjoy, of course, the full protection of the United States Constitution"); *Tineo* v. *Ashcroft*, 350 F.3d 382, 389 (3d Cir. 2003) (entertaining habeas petition from a lawful permanent resident under 28 U.S.C. § 1441); *Singh* v. *Reno*, 113 F.3d 1512, 1514 (9th Cir. 1997) (same); *Jean-Baptiste* v. *Reno*, 144 F.3d 212, 219 (2d Cir. 1998) ("Without the ability to seek a writ of habeas corpus under § 2241, certain lawful permanent residents . . . would have no opportunity to address serious constitutional issues."). Because their constitutional rights attach as a result of status and connection to the United States rather than locus of their arrest or detention, the Writ's protections reach citizens and lawful permanent residents held abroad: "When the Government reaches out to punish a citizen who is abroad, the shield which the Bill of Rights and other parts of the Constitution provide to protect his life and liberty should not be stripped away just because he happens to be in another land." *Reid* v. *Covert*, 354 U.S. 1, 6 (1957) (plurality opinion).

The Court should hold this petition pending its decision in *Boumediene*. In *Boumediene*, the Court will consider the constitutionality of the MCA regime as applied to Guantánamo detainees who are *not* lawful permanent residents, including whether such detainees may invoke the protections of the

Suspension Clause and the Due Process Clause. If the Court resolves those threshold issues in favor of the *Boumediene* petitioners, the Court will then consider many issues – in particular, the adequacy of the CSRT process and the DTA remedy as a substitute for habeas and their adequacy under the Due Process Clause – that are substantially the same as those presented in this case. The Court's resolution of those issues in *Boumediene* may bear on the Court's consideration of those issues presented in the distinct context of a lawful permanent resident. In theory, the Court's disposition of those issues in *Boumediene* could render the issue of lawful permanent resident status academic.

CONCLUSION

The Court should hold this petition pending its decision in *Boumediene*. When the Court has decided that case, the Court should (i) direct the parties to file supplemental briefs addressing the effect of *Boumediene* on this case, or (ii) grant the petition, vacate the judgment below, and remand the case for reconsideration in light of *Boumediene*.

Respectfully submitted,

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APPENDIX A

United States Court of Appeals
for the District of Columbia Circuit

September Term, 2006
Filed On: Apr. 9, 2007

No. 05-5194

Saifullah Paracha, Detainee, Guantanamo Bay Naval Station and Farhat Paracha, Next Friend, Appellants,

v.

George W. Bush, Jr., et al., Appellees.

Consolidated with 05-5211, 05-5333

No. 06-1038

Saifullah Paracha, Petitioner,

v.

Robert M. Gates, Secretary of Defense, Respondent.

No. 06-1117

Saifullah Paracha, Petitioner,

v.

Robert M. Gates, Secretary of Defense, Respondent.

BEFORE: Ginsburg, Chief Judge, Randolph, Circuit Judge, and Edwards, Senior Circuit Judge

ORDER

Upon consideration of the motion of respondents-appellees to govern future proceedings and to dismiss Nos. 05-5194, 05-5211, and 05-5333, to proceed with petition for review No. 06-1038, and to dismiss No. 06-1117; and the motion of petitioner-appellant to consider and grant his dispositive motion, it is

ORDERED that the motion of petitioner-appellant to consider and grant his dispositive motion in all of his cases be denied without prejudice to any claims raised by petitioner in No. 06-1038. It is

FURTHER ORDERED that Nos. 05-5194 and 05-5333 be remanded to the district court with instructions to dismiss the petitions for writ of habeas corpus for lack of jurisdiction. *See* *Boumediene* v. *Bush*, 476 F.3d 981 (D.C. Cir. 2007), *cert. denied*, ___ S.Ct ___, 2007 WL 957363 (April 2, 2007) (No. 06-1195, 06-1196). It is

FURTHER ORDERED THAT No. 05-5211 be dismissed as moot without prejudice to any claims raised by petitioner in No. 06-1038. It is

FURTHER ORDERED that petitioner's motions relating to conditions of his confinement be dismissed. The court lacks jurisdiction to consider these claims. *See* 28 U.S.C. § 2241(e); Section 7(a) of the Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 (2006). It is

FURTHER ORDERED that No. 06-1117 be dismissed. The court lacks jurisdiction to review Administrative Review Board determinations. *See*

Sections 1005(e)(2)(A), (e)(3)(A) of the Detainee Treatment Act of 2005, Pub. L. No. 109-148, 119 Stat. 2680 (2005). It is

FURTHER ORDERED that the following briefing schedule apply in No. 06-1038:

Brief for Petitioner	July 16, 2007
Appendix	July 16, 2007
Brief for Respondent	August 15, 2007
Reply Brief for Petitioner	August 31, 2007

The parties are directed to take into account the court's disposition of No. 06-1197, *Bismullah v. Gates*, and No. 06-1397, *Parhat v. Gates* (scheduled for argument on May 15, 2007), in addressing issues related to discovery and this court's scope of review. The court will not entertain any motions for extension of time to file briefs but may permit supplemental briefing if No. 06-1197 and No. 06-1397 are decided after completion of briefing in No. 06-1038. The briefs and appendix are to be filed and served by hand by 4:00 p.m. on the date each is due. It is

FURTHER ORDERED that No. 06-1038 be scheduled for oral argument on September 17, 2007, at 9:30 a.m. before Chief Judge Ginsburg, Circuit Judge Randolph, and Senior Circuit Judge Edwards. The time and date of oral argument will not change absent further order of the court. The parties will be notified by separate order of the allocation of time for oral argument.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate in Nos. 05-5194, 05-5333, and 06-1117 until seven days after disposition of any timely petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

PER CURIAM

FOR THE COURT:
Mark J. Langer, Clerk
BY: /s Cheri Carter
Deputy Clerk

APPENDIX B

United States Court of Appeals
for the District of Columbia Circuit

No. 05-5194

September Term, 2006
04cv02022
Filed On: June 20, 2007 [1048438]

Saifullah Paracha, Detainee, Guantanamo Bay Naval Station and Farhat Paracha, Next Friend,

Appellants

v.

George W. Bush, Jr., et al.,

Appellees

Consolidated with 05-5333

BEFORE: Ginsburg, Chief Judge, Randolph, Circuit Judge, and Edwards, Senior Circuit Judge

ORDER

Upon consideration of appellants' motion to stay the mandate, the opposition thereto, and the reply, it is

ORDERED that the motion be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:
Michael C. McGrail
Deputy Clerk

APPENDIX C

U.S. Constitution, art. 1, § 9, cl. 2

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

U.S. Constitution, Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

28 U.S.C. § 2241

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of habeas corpus shall not extend to a prisoner unless--

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is

filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

(e)

(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

Detainee Treatment Act of 2005, Pub. L. No. 109-148, 119 Stat. 2680 (2005)

§ 1003. PROHIBITION ON CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT OF PERSONS UNDER CUSTODY OR CONTROL OF THE UNITED STATES GOVERNMENT.

(a) IN GENERAL.--No individual in the custody or under the physical control of the

United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(b) CONSTRUCTION.--Nothing in this section shall be construed to impose any geographical limitation on the applicability of the prohibition against cruel, inhuman, or degrading treatment or punishment under this section.

(c) LIMITATION ON SUPERSEDURE.--The provisions of this section shall not be superseded, except by a provision of law enacted after the date of the enactment of this Act which specifically repeals, modifies, or supersedes the provisions of this section.

(d) CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT DEFINED.--In this section, the term "cruel, inhuman, or degrading treatment or punishment" means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

SEC. 1005. PROCEDURES FOR STATUS REVIEW OF DETAINEES OUTSIDE THE UNITED STATES.

(e) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.--

(1) IN GENERAL.--Section 2241 of title 28, United States Code, is amended by adding at the end the following:

"(e) Except as provided in section 1005 of the Detainee Treatment Act of 2005, no court, justice, or judge shall have jurisdiction to hear or consider--

"(1) an application for a writ of habeas corpus filed by or on behalf of an alien detained by the Department of Defense at Guantanamo Bay, Cuba; or

"(2) any other action against the United States or its agents relating to any aspect of the detention by the Department of Defense of an alien at Guantanamo Bay, Cuba, who--

"(A) is currently in military custody; or

"(B) has been determined by the United States Court of Appeals for the District of Columbia Circuit in accordance with the procedures set forth in section 1005(e) of the Detainee Treatment Act of 2005 to have been properly detained as an enemy combatant.".

(2) REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.--

(A) IN GENERAL.--Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision of a Combatant Status Review Tribunal that an alien is properly detained as an enemy combatant.

(B) LIMITATION ON CLAIMS.--The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to claims brought by or on behalf of an alien--

> (i) who is, at the time a request for review by such court is filed, detained by the Department of Defense at Guantanamo Bay, Cuba; and
>
> (ii) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specified by the Secretary of Defense.

(C) SCOPE OF REVIEW.--The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on any claims with respect to an alien under this paragraph shall be limited to the consideration of--

(i) whether the status determination of the Combatant Status Review Tribunal with regard to such alien was consistent with the standards and procedures specified by the Secretary of Defense for Combatant Status Review Tribunals (including the requirement that the conclusion of the Tribunal be supported by a preponderance of the evidence and allowing a rebuttable presumption in favor of the Government's evidence); and

(ii) to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to make the determination is consistent with the Constitution and laws of the United States.

(D) TERMINATION ON RELEASE FROM CUSTODY.--The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this paragraph shall cease upon the release of such alien from the custody of the Department of Defense.

Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 (2006)

SEC. 5. TREATY OBLIGATIONS NOT ESTABLISHING GROUNDS FOR CERTAIN CLAIMS.

(a) IN GENERAL.--No person may invoke the Geneva Conventions or any protocols thereto in any habeas corpus or other civil action or proceeding to which the United States, or a current or former officer, employee, member of the Armed Forces, or other agent of the United States is a party as a source of rights in any court of the United States or its States or territories.

SEC. 7. HABEAS CORPUS MATTERS.

(a) IN GENERAL.--Section 2241 of title 28, United States Code, is amended by striking both the subsection (e) added by section 1005(e)(1) of Public Law 109-148 (119 Stat. 2742) and the subsection (e) added by added by section 1405(e)(1) of Public Law 109-163 (119 Stat. 3477) and inserting the following new subsection (e):

"(e)(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

"(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.".

(b) EFFECTIVE DATE.--The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001.

Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001)

Joint Resolution To authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States.

Whereas, on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens; and

Whereas, such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad; and

Whereas, in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence; and

Whereas, such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States; and

Whereas, the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the "Authorization for Use of Military Force"

SEC. 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

(a) IN GENERAL.--That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized,

committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

(b) War Powers Resolution Requirements--

(1) SPECIFIC STATUTORY AUTHORIZATION.--Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

(2) APPLICABILITY OF OTHER REQUIREMENTS.--Nothing in this resolution supercedes any requirement of the War Powers Resolution.

Geneva Convention (III) Relative to the Treatment of Prisoners of War, Aug. 12, 1949, [1955] 6 U.S.T. 3316

ARTICLE 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who

have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular, humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, art. 3 (Common Article 3), Aug. 12, 1949, [1956] 6 U.S.T. 3516, 75 U.N.T.S. 287

ARTICLE 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

> (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
>
> To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the abovementioned persons:

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The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

APPENDIX D

Saifullah A. Paracha deposes and says:

1. I was born on August 17, 1947. I will be sixty (60) years old by coming August 2007.

2. I studied in New York Institute of Technology, 888 7th Ave., New York, NY 10019, with few credit hours incomplete in B.S. System Design and System Analyst (Computer Science). And I worked in Market Data Retrieval, Inc. 485 5th Avenue, New York, NY 10017, in their computer department.

3. I do hold a visa as a permanent resident of the United States, a "green card," and I am a citizen and national of the Islamic Republic of Pakistan.

4. I am married since March 21, 1979 with FARHAT and she also holds "green card."

5. We have four children, details are:
Uzair S. Paracha, born Jan. 07, 1980, son, holds green card & MBA (finance);
Muneeza S. Paracha, born Aug. 25, 1982, daughter, holds green card. MBA;
Mustafa S. Paracha, born Oct. 17, 1989, son, holds green card. H. School.
Zahra S. Paracha, born Sept. 9, 1992, daughter, holds green card, school.

6. I bought a running business in approximately 1974, Globe Travel Service (Pakistan) Ltd., incorporated in New York, 630 Fifth Ave., New York, Rockefeller Plaza, and established Sana Travel, Inc., 507 Fifth Ave., NY 10017. Established Third World Broadcasting 90 minutes weekly T.V. program telecasted on WNJU, NJ, Pakistan television programs in Urdu for Pakistan community.

7. Established International Merchandise (Pvt.) incorporated in Pakistan as a garment buying

house with U.S. national Allan Levi, Steven Levi and Charles Anteby with Pakistan national Director Farhat (wife), Zafarullah A. Paracha (brother) and myself. And corresponding office in garment district, International Merchandise, Inc., 240 West 35th St., New York, NY 10017. We were executing approximately US $1,000,000 (one million) per month, Pakistani man-made garments to USA. Charles Anteby filed bankruptcy and started Chanco Buying Agency. In Pakistan we had in our garment buying office about 50 employees. It was required that Charles Anteby to procure garment business and Karachi office to place orders with garment factories in Pakistan, monitor quality and timely shipment under my supervision. I was Chairman, Board of Director. My estimate is that we executed total about US $100,000,000 (one hundred million), average duty (import) paid to U.S. exchanges about US $20,000,000 (twenty).

8. With our travel business in New York, I also established a travel agency Sana Travel Service (Pvt) Ltd., Karachi, Pakistan, to facilitate our customers from USA's Pakistanis and to provide service to Pakistanis also.

My sister Mrs. Mumitaz I. Paracha (died last year) was living with her three sons married, four daughters married with her grandchildren in USA.

My sister Qaiser I. Ahmed, with her two married daughters, one son married and one son single with grandchildren living in USA.

My sister Razia H. Piracha with her two sons and grandchildren living in USA.

My brother Esmatullah Paracha, with two daughters and two sons and with grandchildren living in USA.

My wife's sister Maria Malik with her two sons living in USA.

All my four children have been A+ students, Uzair S. Paracha graduated his MBA last December 2002 and in February 2003 he moved to New York; my daughter Muneeza is expected to complete her MBA in management info Science (MIS) by the end of 2007. All of my children preferred to live in the United States and with their educational background they would certainly have a bright future.

After retirement we would also like to settle with our immediate family, two brothers, three sisters, one sister-in-law, their children and grandchildren, our own children in the USA.

I was also negotiating with Prime TV, who have exclusive rights for Pakistan Television for Europe and North America. I was only interested to buy 50% of Prime TV N.J. and settle in USA to conduct this business through cable network, which did not materialize but I was still working with Prime TV for my production for the future.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statement is true and correct.

Executed on July 3, 2007
/s Saifullah A. Paracha

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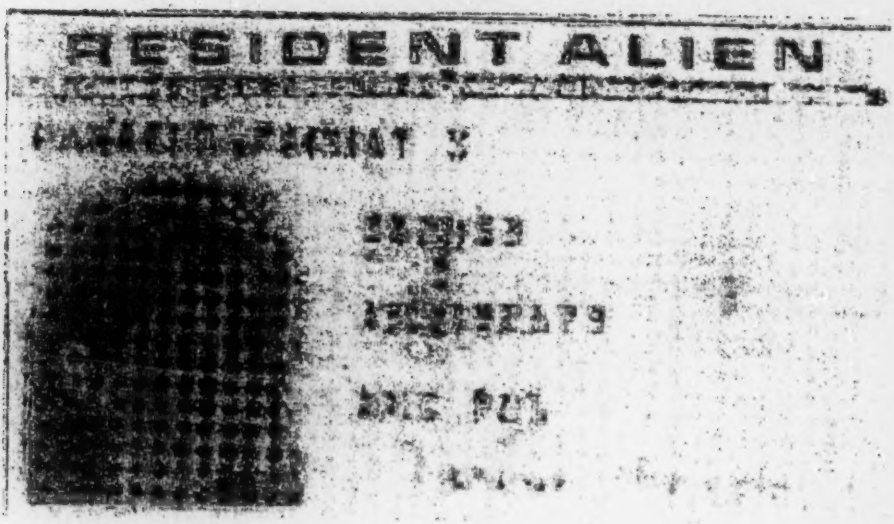
APPENDIX E

APPENDIX F



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No. 07-153

In the Supreme Court of the United States

SAIFULLAH PARACHA, PETITIONER

v.

GEORGE W. BUSH,
PRESIDENT OF THE UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS

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QUESTION PRESENTED

Whether the Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600, validly divests the federal courts of jurisdiction over habeas corpus petitions filed by aliens detained as enemy combatants at Guantanamo Bay, Cuba.

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In the Supreme Court of the United States

No. 07-153

SAIFULLAH PARACHA, PETITIONER

v.

GEORGE W. BUSH,
PRESIDENT OF THE UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS

OPINION BELOW

The order of the court of appeals (Pet. App. a2-a5) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 9, 2007. On July 6, 2007, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including August 7, 2007, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner is a citizen of Pakistan who is detained as an enemy combatant at the United States Naval Base at Guantanamo Bay, Cuba. Petitioner has received a

formal adjudicatory hearing before a Combatant Status Review Tribunal (CSRT), and the CSRT found that petitioner is an enemy combatant based on petitioner's affiliation with the al Qaeda terrorist organization. The CSRT reached that conclusion after reviewing evidence of petitioner's involvement in an al Qaeda plan to smuggle explosives into the United States, his possession and management of large sums of al Qaeda money given to him by known al Qaeda operatives, and his recommendation to an al Qaeda operative that nuclear weapons be used against United States troops and suggestion as to where such weapons might be obtained. Gov't C.A. Br. 11-12.

2. Petitioner filed a petition for a writ of habeas corpus, but the district court stayed the case pending the resolution by the court of appeals of the related appeals in *Boumediene* v. *Bush*, No. 05-5062 (D.C. Cir.), and *Al Odah* v. *United States*, No. 05-5064 (D.C. Cir.). Gov't C.A. Br. 11-12. Petitioner appealed the stay, and the case was argued before the court of appeals. Thereafter, the court issued an order directing the parties to file motions to govern further proceedings within 30 days of the court's resolution of *Boumediene* and *Al Odah*.

3. On February 20, 2007, the court of appeals issued its decision in *Boumediene* and *Al Odah*. See *Boumediene* v. *Bush*, 476 F.3d 981 (D.C. Cir.), cert. granted, 127 S. Ct. 3078 (2007). The court held that Section 7 of the Military Commissions Act of 2006 (MCA), Pub. L. No. 109-366, 120 Stat. 2635, applies to all cases filed by aliens detained as enemy combatants, including pending habeas corpus cases, and eliminates federal court jurisdiction over such cases. See *Boumediene*, 476 F.3d at 994. The court further held that the removal of habeas corpus jurisdiction did not violate the Suspension Clause

because the alien detainees held at Guantanamo have no rights under that provision, and because the constitutional right to seek habeas corpus review does not extend to aliens held outside the sovereign territory of the United States. See *id.* at 990-993. As a result, the court ordered that the district courts' decisions in those detainee cases be vacated, and it further ordered the district courts to dismiss the cases for lack of jurisdiction. See *id.* at 994.

4. As directed by the earlier order of the court of appeals, the parties filed motions to govern further proceedings. Petitioner contended that because decades ago he had been granted lawful permanent resident status in the United States, the decision in *Boumediene* did not govern his case. In response, the government explained that petitioner is an alien—the same as the petitioners in *Boumediene*—because he abandoned any lawful permanent resident status by leaving the United States with his family over 20 years ago to move back to Pakistan. Gov't C.A. Mot. to Govern Further Proceedings 9. Accordingly, the government argued that *Boumediene* require dismissal of his habeas petition.

5. On April 9, 2007, the court of appeals dismissed petitioner's habeas corpus action for lack of jurisdiction. Pet. App. a2-a3. On June 29, 2007, this Court granted a writ of certiorari in *Boumediene*. 127 S. Ct. 3078.

ARGUMENT

Petitioner asks (Pet. 8-10) this Court to hold his petition for a writ of certiorari pending its resolution of *Boumediene*. Because the issues in this case are the same as those in *Boumediene*, the petition should be held.

1. Petitioner's case concerns the same issues as those presented by *Boumediene*: whether the MCA removes federal court jurisdiction over habeas corpus petitions filed by aliens at Guantanamo Bay, Cuba; whether aliens detained at Guantanamo Bay have rights under the Suspension Clause of Article I, Section 9, of the Constitution; and whether, if aliens detained at Guantanamo Bay have such rights, the MCA violates the Suspension Clause. Petitioner, an alien detained as an enemy combatant at Guantanamo Bay, is indistinguishable from the petitioners in *Boumediene*. Because this Court's ruling in *Boumediene* will control the disposition of his habeas corpus petition, the petition for a writ of certiorari should be held pending this Court's decision in that case.

2. Petitioner suggests (Pet. 8-10) that he has greater constitutional rights than the *Boumediene* petitioners, and that this case may not be controlled by *Boumediene* because it involves "the distinct context of a lawful permanent resident." Pet. 10. That is incorrect.

Like the petitioners in *Boumediene*, petitioner is not a United States citizen. Instead, he is a citizen of Pakistan. Pet. C.A. App. 3. Although petitioner was once a permanent legal resident of the United States, he abandoned that status over 20 years ago when he permanently returned to his home country of Pakistan. C.A. Supp. App. 1-2; see 8 U.S.C. 1101(a)(20) (defining a lawful permanent resident as one who has "been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed"). Petitioner therefore is in no different a situation than the other aliens held at Guantanamo Bay.

The District of Columbia Circuit has explained that an individual loses his legal permanent resident status

by "engag[ing] in an abandoning act, like departing the United States for more than a 'temporary visit abroad,' 8 U.S.C. § 1101(a)(27)(A)." *United States* v. *Yakou*, 393 F.3d 231, 239, 240-242 (2005). In *Yakou*, the court found that when an Iraqi national, who had been granted permanent resident status, moved from the United States to England and then to Iraq, he had left the United States for more than a "temporary visit abroad." *Id.* at 241-242. The court further determined that the alien's repeated short trips to the United States were not sufficient to retain his permanent resident status. See *id.* at 242; accord *Katebi* v. *Ashcroft*, 396 F.3d 463, 466-467 (1st Cir. 2005) (key inquiry is whether alien has the "intent to return to the United States as soon as practicable").

In this case, petitioner plainly did not leave the United States for only a "temporary visit abroad." Rather, the record establishes that he permanently left the United States to return home to Pakistan in 1986 with his wife and children, with no intention to return to this country. C.A. Supp. App. 1-2. At that time, he sold his United States residence and bought a house in Karachi, Pakistan, where he lived with his family continuously until his detention. *Ibid.* Between 1986 and 1999, he made brief visits to the United States about once a year, but he did not return to the United States at all between 1999 and 2003, when he was captured overseas. *Ibid.* Petitioner's claim (Pet. 3) that he intends to return to this country at some indefinite future time is insufficient to preserve or reestablish his legal permanent resident status, particularly since it is asserted in this litigation for the first time and long after petitioner's departure from the United States. See *Yakou*, 428 F.3d at 248 (status changes at the time the legal permanent resident

engages in an abandoning act, such as departing the country "with no fixed intent to return'") (quoting *In re Montero*, 14 I. & N. Dec. 399, 401 (B.I.A. 1973)); see also *Singh* v. *Reno*, 113 F.3d 1512, 1514 (9th Cir. 1997) ("The relevant intent is not the intent to return ultimately, but the intent to return to the United States within a relatively short period.").

Petitioner also lacks any ownership interest in any United States business or property. C.A. Supp. App. 2. Petitioner suggests (Pet. 2) that he previously had two travel businesses in New York. But he makes no allegation that those companies remain in business or that he still maintains any ownership interest in either of them.

Nor does petitioner's mere possession of a "green card" make him a current legal permanent resident. There is no requirement that the United States formally revoke an individual's status (or green card) before an individual may lose that status. See *Yakou*, 393 F.3d at 240-242. Rather, the key inquiry is whether petitioner's decision to move to Pakistan with his wife and family in 1986, and to stay there for almost two decades thereafter, was more than merely a temporary visit abroad. By all accounts, it was.

Petitioner cannot distinguish himself from the "aliens without property or presence within the United States" in *Boumediene*, 476 F.3d at 990-991, and there is therefore no doubt that the rationale of the court of appeals' decision in *Boumediene* fully applies to his case.

CONCLUSION

The petition for a writ of certiorari should be held pending the resolution of *Boumediene* v. *Bush*, No. 06-1195, and then disposed of as appropriate in light of that decision.

Respectfully submitted.

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